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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOE HEMP'S FIRST HEMP BANK AND
DISTRIBUTION NETWORK and DAVID
CLANCY,

No. C 15-05053 WHA

Plaintiffs,

v.

CITY OF OAKLAND, and GREGORY
MINOR,

**ORDER DENYING ALL
PROVISIONAL RELIEF**

Defendants.

/

This order follows full briefing and oral argument on November 19, 2015.

This action is based entirely on the proposition that our plaintiff is a “warehouse” (for marijuana) within the meaning of the federal Controlled Substances Act, 21 U.S.C. 822(c), and therefore, in addition to being exempted from that Act, is somehow immune from being taxed by the City of Oakland by reason of federal preemption. It doesn’t follow, however, that a warehouse for federal purposes cannot be taxed under local law. No decision has ever so held.

It is of no moment that the City of Oakland has designated plaintiff as a “dispensary” for purposes of the local tax. Plaintiff could certainly qualify as a “dispensary” under local law and simultaneously as a “warehouse” under the federal law but, even if so, nothing in the Controlled Substances Act prohibits a local tax on warehouses. Consequently, this entire action is predicated on a false premise. All provisional relief is **DENIED**.

1 Out of an abundance of caution, this order merely assumes for the sake of argument that
2 plaintiff qualifies as a “warehouse” under federal law and does not (and need not) make any
3 such finding.

4 The Court recommends that the parties stipulate to entry of judgment in favor of the City
5 of Oakland, rather than incurring the delay and expense of a motion to dismiss so the case can
6 go up on appeal expeditiously. Please advise the Court of your view within **SEVEN CALENDAR**
7 **DAYS.**

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9 **IT IS SO ORDERED.**

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11 Dated: November 19, 2015.

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14 WILLIAM ALSUP
15 UNITED STATES DISTRICT JUDGE